

**REMARKS**

Claims 1-10, 12, 13, 15, 17-23, 25, and 28-31 are pending in the application.

Claims 1-10, 12, 13, 15, 17-23, 25, and 28-31 stand rejected.

Claims 1, 12, 15, and 28 have been amended. Support for these amendments can be found at least in ¶¶ [0067]-[0068] of the original application.

Claim 32 has been added. Support for this claim can be found at least in ¶¶ [0067]-[0068] of the original application.

**Claim Objections**

Claim 15 stands objected to since it states “remove **the the** first of the plurality of virtual . . . .” See Office Action, p. 2 (emphasis in original). Applicants request the withdrawal of this objection since claim 15 has been amended to address this objection.

**Rejection of Claims under 35 U.S.C. § 101**

Claim 12 stands rejected under 35 U.S.C. §101 because it is purportedly “directed to a computer readable medium including **communications medium conveying signals encoding the instructions.**” See Office Action, p. 3 (emphasis in original). Applicants request the withdrawal of this rejection since claim 12 has been amended to address this objection.

**Rejection of Claims Under 35 U.S.C. § 112**

Claim 28 stands rejected under 35 U.S.C. §112, second paragraph since it states “a means detecting when a computer system . . . .” See Office Action, p. 3. Applicants

request the withdrawal of this rejection since claim 28 has been amended to state “a means for detecting when a computer system . . .” (emphasis added).

*Rejection of Claims under 35 U.S.C. § 102*

Claims 1-10, 12, 13, 15, 17-23, 25, and 28-31 stand rejected under 35 U.S.C. §102(e) as purportedly being anticipated by U.S. Patent Publication No. 2005/0268154 naming Wipfel et al. as inventors (Wipfel). *See* Office Action, p. 3. Applicants offer amendments and respectfully traverse this rejection.

Independent claims 1, 15, and 28 have been amended to contain language directed toward the removal of a first node from a computer system cluster in response to an attempt to gain control of a coordinator virtual device being unsuccessful. Applicants submit that Wipfel fails to teach the requirements contained in such language. Wipfel removes nodes from its clusters based on other criteria. Wipfel states that

[0068] The resolution of cluster partition is implemented by a static algorithm where the partition with the majority of nodes survives and the nodes in the minority partition eat the poison pill. In case of a tiebreaker, the following algorithm is implemented.

[0069] First, in case of a two-node cluster, the node that is connected to the local area network wins the tiebreaker and the node which is disconnected from the local area network loses the tiebreaker.

[0070] Second, the partition whose master node has not changed from previous membership wins the tiebreaker and the partition whose master node has changed loses the tiebreaker.

Wipfel, ¶¶ [0068]-[0070]. Thus, Wipfel removes nodes from its clusters based upon (1) whether its nodes fall into a partition having fewer nodes than a competing partition, (2) whether its nodes are disconnected from a local area network, or (3) whether its nodes fall into a partition having a master node that has changed. Wipfel does not remove its

nodes from a computer system cluster in response to an attempt to gain control of a coordinator virtual device being unsuccessful.

Applicants are aware that the Office Action cites ¶¶ [0041], [0052], and [0075] of Wipfel in order to support its assertion that Wipfel teaches removing a first node from a computer system cluster. However, as would be expected in light of the above discussion of Wipfel, none of these paragraphs teach the removal of a first node from a computer system cluster in response to an attempt to gain control of a coordinator virtual device being unsuccessful.

The first paragraph, ¶ [0041], merely states that it must be determined quickly “whether it is necessary to ‘freeze out’ or ‘fence off’ (temporarily remove) the silent node.” It does not provide the conditions under which nodes are removed from a cluster.

The second paragraph, ¶ [0052], fails to discuss the removal of a node from a cluster at all. Instead it discusses the effects of a cluster becoming partitioned on Wipfel’s membership lists and epoch numbers. Though the second paragraph states that node lists for other nodes in the cluster “will exclude the node(s) [of the cluster] that failed,” this does not imply that the nodes have been removed from the cluster. This simply describes a situation that can be exploited in order for Wipfel to detect that a partition has been created, as discussed in ¶¶ [0065]-[0066] of Wipfel.

The third paragraph, ¶ [0075], also fails to discuss the removal of a node from a cluster. Instead it discusses the releasing and reserving of a SCSI disk in order to prevent multiple nodes of a cluster from having simultaneous access to a SCSI disk, and to prevent cluster partitioning in the first place.

Thus, for at least the reason that Wipfel fails to teach the removal of a first node from a computer system cluster in response to an attempt to gain control of a coordinator virtual device being unsuccessful, Applicants respectfully request the reconsideration and

withdrawal of the rejection against independent claims 1, 15, and 28, as well as against the remaining rejected dependent claims.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric A. Stephenson', with a long horizontal flourish extending to the right.

Eric A. Stephenson  
Attorney for Applicants  
Reg. No. 38,321  
Telephone: (512) 439-5093  
Facsimile: (512) 439-5099